

REMARKS

Claims 22, 28-34 and 79 are pending. By this Amendment, claims 22, 28 and 33 are amended.

Rejections Under 35 USC §103(a)

Claims 22, 28-34 and 79 were rejected as being obvious in light of US Patent 5,549,679 to Kuslich. In support of the obviousness rejection, the Office Action states that the claims do not distinctly differentiate from the Kuslich '679 Patent because the claim term, "vertebral body," may be interpreted to include the intervertebral disc space. To clarify that the claim term "vertebral body" is not directed to the intervertebral disc space, but to the vertebral bone itself, claims 22, 28 and 33 have been amended to recite "vertebral bone" instead of "vertebral body." With respect to FIG. 5 of the '679 Patent, that figure depicts the placement of a device in the disc space between two opposing vertebral bones or bodies. See '679, Col. 8, ln 3-14. As the '679 Patent explains, the surface of the vertebral bodies or bones on opposite sides of the disc space must be scraped and exposed in order to promote successful grafting and fusion to effectively treat the intervertebral disc space. See '679, Col. 8, ln 50-60. Thus, the '679 Patent is directed toward spinal fusion to treat the disc space and not to treating the vertebral bone itself as recited in claims 22, 28-34 and 79.

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

Application No. 10/804,761

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Wendy J. Cusick', written over a horizontal line.

Wendy J. Cusick
Registration No. 52,788

Customer No. 24113
Patterson, Thuent, Skaar & Christensen, P.A.
4800 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55402-2100
Telephone: (612) 349-3019